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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/605,973	11/11/2003	Leonid Petrenko	LP02	2972
27797	7590	10/21/2004	EXAMINER	
RICHARD D. FUERLE 1711 W. RIVER RD. GRAND ISLAND, NY 14072				REIS, TRAVIS M
		ART UNIT		PAPER NUMBER
		2859		

DATE MAILED: 10/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/605,973	PETRENKO, LEONID
	Examiner	Art Unit
	Travis M Reis	2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-20 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 11 November 2003 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>20031111</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## DETAILED ACTION

### ***Claim Objections***

1. Claim 7 is objected to because of the following informalities:

In line 4, "an" should be ---the---.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

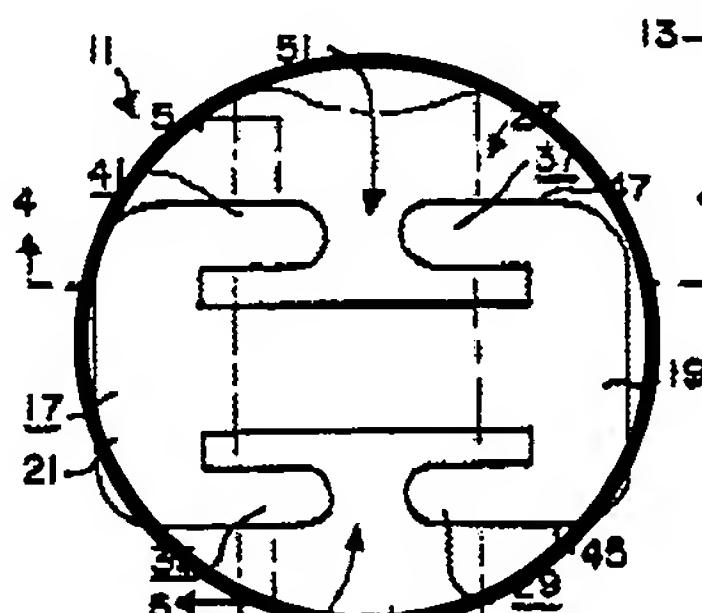
2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5 & 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Norris (U.S. Patent 5590545).

Norris discloses a device comprising a flat plate made of plastic (col. 4 lines 55-57) that has a middle section (17) between two larger end sections (19, 21), where said plate is symmetrical about a first axis that passes through said middle section and said end sections and is symmetrical about a second axis at 90° to said first axis that passes through the center of said middle section (Figure 3); wherein the periphery of said end sections lies on the circumference of a circle centered at the intersection of said first axis and said second axis (see below).



With respect to the preamble of the claims 1-5 and 14-16: the preamble of the claim does not provide enough patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self – contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 ( CCPA 1951).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 6, 17, & 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Norris.

Norris discloses all of the instant claimed invention as stated above in the rejection of claims 1-5 & 14-16, including the device may be made of metal (col. 4 lines 55-57).

Norris does not disclose the metal is rust proof. However, the particular type of material used to make the plate, absent any criticality, is only considered to be the use of a "preferred" or "optimum" material out of a plurality of well known materials that a person having ordinary skill in the art at the time the invention was made would have find obvious to provide using routine experimentation based, among other things, on the intended use of Applicant's apparatus, i.e., suitability for the intended use of Applicant's apparatus, and since the courts have stated that a selection of a material on the basis of suitability for intended use of an apparatus would be entirely obvious. See *In re Leshin*, 125 USPQ 416 (CCPA 1960 ). Therefore, it would have been obvious to one with ordinary skill in the art at the time of the



invention was made to use rust proof metal for the plate disclosed by Norris in order to protect the plate in case the plate gets wet.

6. Claims 7-13, 18, & 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Norris in view of Bowers (U.S. Patent 5096022).

With reference to claims 7-11, 18, & 20, Norris discloses all of the instant claimed invention as stated above in the rejection of claims 1-5 & 14-16, including two plates (Figure 1); & a loop of material passing over the middle section of said plate (Figure 2).

Norris does not disclose a flag display and method comprising a flag having two eyelets each with an aperture therethrough and a halyard, a loop of which passes through said aperture and over the plate over each aperture.

Bower discloses a theft –proof flag locking system with a flag (100) having two eyelets (101, 102) each with an aperture therethrough (X,Y, see below)



and a halyard (90), a loop of which (91, 92) through each of said apertures (Figure 1).

Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to add the flag & halyard disclosed by Bower to the plates disclosed by Norris in order to widen the range of cloth articles (i.e. a garment or a flag) retained by the plates.

With reference to claim 12, Norris & Bowers disclose all of the instant claimed invention as stated above in the rejection of claims 1-5 & 14-16, including the device may be made of metal (col. 4 lines 55-57).

Norris & Bowers does not disclose the metal is rust proof. However, the particular type of material used to make the plate, absent any criticality, is only considered to be the use of a "preferred" or "optimum" material out of a plurality of well known materials that a person having ordinary skill in the art at the time the invention was made would have found obvious to provide using routine experimentation based, among other things, on the intended use of Applicant's apparatus, i.e., suitability for the intended use of Applicant's apparatus, and since the courts have stated that a selection of a material on the basis of suitability for intended use of an apparatus would be entirely obvious. See In re Leshin, 125 USPQ 416 (CCPA 1960). Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to use rust proof metal for the plate disclosed by Norris & Bowers in order to protect the plate in case the plate gets wet.

With reference to claim 13, Norris & Bowers does not disclose said apertures are about 3/8 to about 1 inch in diameter and the end portions of said plate are 1/8 to 1/4 inches larger. However, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide apertures having a diameter in the range of about 3/8 to about 1 inch; and the end portions 1/8 to 1/4 inches larger since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the "optimum range" involves only routine skill in the art. In re Aller, 105 USPQ 233. Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to make the apertures have a diameter in the range of about 3/8 to about 1 inch; and the end portions 1/8 to 1/4 inches larger in order to an easily handled size.

### **Conclusion**

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sprague discloses a sash weight (U.S. Patent 161564). Louft discloses a display

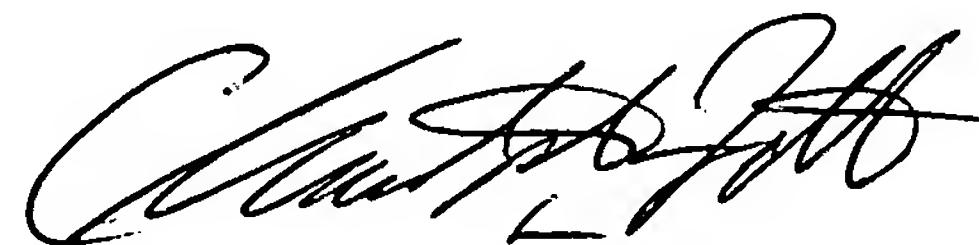
sign standard (U.S. Patent 3315393). Booth discloses a signal device (U.S. Patent 3280790). Kamp discloses a device for attachment to an elongated support extending from a vehicle (U.S. Patent 3636912). Ashton discloses a clearance pocket assembly with a butterfly shaped valve cover in Figure 6 (U.S. Patent 3878770). McGahee discloses a quick line coupling device for pennants (U.S. Patent 3910226). Kirkendall discloses an antenna system with a butterfly shaped plate (U.S. Patent 089817). Relzmann discloses a mnemonic identification means (U.S. Patent 4729338). Currie discloses an antenna signal device (U.S. Patent 4960067). Jacobs discloses a gate panel attachment assembly (U.S. Patent 6389659). Keats disclose buttons (U.S. Patent 177253).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Travis M Reis whose telephone number is (571) 272-2249. The examiner can normally be reached on 8-5 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for all communications.

Travis M Reis  
Examiner  
Art Unit 2859

tmr  
October 14, 2004



Diego Gutierrez  
Supervisory Patent Examiner  
Technology Center 2800

CHRISTOPHER W. FULTON  
PRIMARY EXAMINER